



## MEMORANDUM

### MONROE COUNTY PLANNING & ENVIRONMENTAL RESOURCES DEPARTMENT

*We strive to be caring, professional and fair*

To: Development Review Committee

From: Mitchell N. Harvey, AICP, Comprehensive Planning Manager *MH*

Through: Townsley Schwab, Acting Director of Planning & Environmental Resources *TS*

Date: December 29, 2008

Subject: *Amendments to the Livable CommuniKeys Master Plan for the Future Development of Big Pine Key and No Name Key*

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Meeting: January 6, 2009

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#### I REQUEST

The Growth Management Division is requesting to amend the Livable CommuniKeys Master Plan for Future Development of Big Pine Key and No Name Key (LCP) to resolve policies that conflict with the Habitat Conservation Plan (HCP) for Florida Key Deer, and Incidental Take Permit (ITP). The HCP was prepared for U.S. Fish and Wildlife by Monroe County in April 2003 and updated April, 2006. The ITP was prepared by the U.S. Fish and Wildlife and became effective on June 9, 2006 and will expire on June 30, 2023. These two federally mandated documents specify land use policies required to protect the Key Deer, Marsh Rabbit, and Indigo Snake through habitat preservation and conservation in Big Pine Key and No Name Key. Permitted uses, accessory uses, and fences are the primary land use issues addressed within the HCP and ITP.

The LCP was prepared in August, 2004 following a series of public workshops that identified community visioning, issues and needs. This effort resulted in the preparation of Recommended Strategies and Actions. The LCP was then incorporated into the Monroe County 2010 Comprehensive Plan by reference as Policy 101.20.2(1) by the Board of County Commissioners on August 18, 2004. Any amendments to the Recommended Strategies and Actions therefore require an amendment to the Monroe County 2010 Comprehensive Plan.

At the present time, these three documents, the LCP, HCP, and ITP provide the guidance necessary to manage growth and proposed development within Big Pine Key and No Name Key. However, planning staff has identified conflicts between these plans that require resolution in order to provide clear guidance for future development decisions. These include action items specified within the HCP and ITP that are not adequately addressed within the LCP. Since the HCP and ITP are Federally mandated plans that support habitat of Federally

protected endangered species, the LCP must be amended to be consistent with these two documents. The following amendments to the LCP will resolve these issues.

**Figure 2.1**

Figure 2.1 is amended to only include lands within Big Pine Key and No Name Key.

Staff Explanation: Existing Figure 2.1 of the LCP includes land that are beyond the jurisdiction of the HCP and ITP

**Action Item 3.2.2:**

The revised ROGO for Big Pine Key and No Name Key include: shall be implemented through the Monroe County Comprehensive Plan and the Monroe County Code, reflecting the requirements of the Habitat Conservation Plan (HCP) and Incidental Take Permit (ITP).

Staff Explanation: The ROGO permit allocation requirements, as stated within the LCP, are not consistent with the development standards specified within Comprehensive Plan and Land Development Regulations. The proposed amendment will require the Comprehensive Plan and the Monroe County Code to be the basis for implementing ROGO standards in Big Pine Key and No Name Key.

~~a. A threshold eligibility of "0" is required to enter the allocation system and compete for an allocation award;~~

~~b. Applications in Tier III have no negative points and therefore achieve the threshold and are automatically eligible to enter the allocation system. Baseline negative values assigned to Tier I and II applications are as follows:~~

Tier II	10
Tier I	20

~~Additional negative points will be accumulated based on the following criteria:~~

Identified Key deer corridor	10
Within 500 meter buffer of Marsh Rabbit habitat	10
No Name Key	10

~~The above criteria are cumulative e.g. an application within Tier I (-20), a deer corridor (-10), and Lower Keys marsh rabbit habitat (-10) would have a total score of -40;~~

~~c. Points may be acquired to reach the threshold and to make the application more competitive through land dedication in Tier I or Tier II (two points) and by aggregating lots in Tier II or Tier III (three points). No aggregation of lots will be permitted in Tier I;~~

~~d. A competitive points based system will be used to award allocations to eligible applicants within each allocation period;~~

~~e. An additional perseverance point will be added for each year an applicant is in the system after year one;~~

f. Applications in Tier III, which entered the current ROGO allocation system prior to adoption of this plan will receive an additional perseverance point for every year they have been in the ROGO system. Applicants in Tier I and Tier II, if they acquire the points necessary to reach the threshold will also receive a point for every year in the system.

g. An applicant will be eligible to apply for administrative relief in five years if an allocation award has not been received. The form of relief will be property purchase for Tier I lands and either property purchase or permit award for Tier II and Tier III lands.

**Action Item 3.2.3:**

Count as part of the 200-unit cap from the approval of the HCP (June 9, 2003), the 4 residential units that have been awarded allocations for beneficial use and administrative relief. These units may be issued upon County approval of the HCP and need not be held for adoption of this Master Plan.

Staff Explanation: There are actually twenty-five (25) total residential used available for beneficial use and administrative relief in the ROGO permit allocation system for Big Pine Key and No Name Key.. Twenty-one (21) have been utilized for beneficial use. The remaining four (4) are available for administrative relief. The proposed amendment brings this Action Item into consistency with the current ROGO permit allocation system for Big Pine Key and No Name Key.

**Action Item 3.2.6:**

Limit allocation awards in Tier I to no more than ~~two percent~~ five percent of all residential units permitted over the twenty year planning period (i.e. a maximum of 10 units) or a total of  $H = 0.022$  (two percent of the total H), whichever results in the lower H.

Staff Explanation: This was an apparent typographical error. The ITP allows a maximum 10 residential units in Tier I or 2% of the total H, not 2% of the total number of residential units.

**Action Item 8.1.1:**

Regulate new fences as follows:

a. Prohibit new fences on Tier I lands except as authorized by the U.S. Fish and Wildlife Service ~~except for fencing of developed lots within Port Pine Heights and Kyle Dyer Subdivisions~~ and fencing required for safety purposes at any location to enclose the immediate impervious area of pools and tennis courts.

Staff Explanation: The ITP and HCP do not allow any fence permits within Tier I. The proposed amendment brings the LCP into conformity with the ITP and HCP by removing the exception of developed lots within Port Pine Heights and Kyle Dyer Subdivision.

b. Prohibit new fences in non-residential areas along U.S. 1.

1  
2 c. Permit new fences on developed ~~canal~~ lots and vacant ~~canal~~ lots that are contiguous to  
3 and serve a principal use within Tier II and Tier III. ~~and within Port Pine Heights and~~  
4 ~~Kyle Dyer Subdivisions~~. All fences shall be designed to meet adopted fence design  
5 guidelines for the planning area already contained in the land development regulations.  
6

7 Staff Explanation: The proposed amendment will allow fences on any developed lot and  
8 vacant lot contiguous to principal use in Tier II and Tier III. There was no evident reason  
9 for only allowing such fences on canal lots. Staff also recommends deleting the reference  
10 to Port Pine Heights and Kyle Dyer Subdivisions since they are located within Tier I.  
11

12 d. Allow replacement of fences existing on the date this plan is adopted in their existing  
13 configuration.  
14

15 e. Do not consider fencing of developed property in Tier II or III (whether developed  
16 with principal or accessory uses) to have H impact additional to the development as  
17 modeled in the HCP as a reduction in K.  
18

19 **Action Item 8.1.2:**

20 Regulate new accessory uses as follows:  
21

- 22 a. No new development other than residential single-family and accessory uses will be  
23 permitted in Tier I Areas. Prohibit new accessory uses other than Tier I lands except  
24 accessory uses located within Port Pine Heights or Kyle Dyer Subdivisions and other  
25 areas with existing fenced yards.  
26

27 Staff Explanation: This statement is a requirement of the HCP and ITP.  
28

29 b. Permit new accessory uses to be located on the same parcel as the principal use within  
30 Tier II and Tier III lands. ~~and within Port Pine Heights and Kyle Dyer Subdivisions~~. Do  
31 not consider accessory uses located on the same parcel as the principal use to have any H  
32 unit impact additional to the principal use.  
33

34 Staff Explanation: Staff recommends deleting the reference to Port Pine Heights and Kyle  
35 Dyer Subdivisions since they are located within Tier I.  
36

37 c. Permit new accessory uses on vacant lots contiguous to and serving a principal use  
38 within Tier II and Tier III lands. ~~and within Port Pine Heights and Kyle Dyer~~  
39 ~~Subdivisions~~. Consider new accessory uses located on vacant lots to impact H-Value.  
40

41 Staff Recommendation: Staff recommends deleting the reference to Port Pine Heights  
42 and Kyle Dyer Subdivisions since they are located within Tier I.  
43  
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1 d. Allow for the replacement of existing accessory uses and/or for their relocation  
2 elsewhere on the same parcel for safety and security purposes.

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4 e. Continue to apply all other Comprehensive Plan and land development regulations  
5 regarding types, placement and other features of accessory uses.  
6

## 7 II PROCESS

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9 Amendments to the Goals, Objectives, and Policies of the Comprehensive Plan may be  
10 proposed by the Board of County Commissioners (BOCC), the Planning Commission or the  
11 ~~Director of Planning. The Director of Planning shall review and process amendments and~~  
12 pass them on to the Development Review Committee and the Planning Commission for  
13 recommendation and final approval by the BOCC.  
14

15 The Planning Commission and the BOCC shall each hold at least one public hearing on a  
16 proposed amendment. The Planning Commission shall review the amendment, the reports  
17 and recommendations of the Department of Planning & Environmental Resources and the  
18 Development Review Committee, and the testimony given at the public hearing, and shall  
19 submit its recommendations and findings to the BOCC. The BOCC shall consider the staff  
20 report, recommendation, and testimony given at the public hearings and may either deny the  
21 application or adopt or not adopt a resolution transmitting the proposed amendment to the  
22 DCA. Amendments are then reviewed by the Florida Department of Community Affairs and  
23 returned to the County with Objections, Recommendations and Comments (ORC Report) to  
24 be considered prior to adoption of the ordinance. Then, an adoption hearing is scheduled for  
25 the BOCC within 60 days of the ORC Report.  
26

## 27 III RELEVANT PRIOR COUNTY ACTIONS

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29 August 18, 2004, BOCC adoption of Policy 101.20.2 (1), incorporating LCP into the Monroe  
30 County 2010 Comprehensive Plan.  
31

## 32 IV REVIEW OF APPLICATION

33

34 A. *Consistency of the proposed amendment with the provisions and intent of the Monroe*  
35 *County Year 2010 Comprehensive Plan:*  
36

37 Staff Comment: The proposed amendment will support and enhance the habitat of  
38 Federally protected endangered species, as required by the Conservation Element.  
39

40 B. *Consistency of the proposed amendment with the provisions and intent of Chapter 9.5 of*  
41 *the Monroe County, Land Development Regulations:*  
42

43 Staff Comment: The proposed amendment may require an amendment to the Land  
44 Development Regulations to enforce the proposed changes to permitted use, accessory  
45 use, and fence requirements in Big Pine Key and No Name Key.  
46

1 C. *Consistency with the Principles for Guiding Development in the Florida Keys Area of*  
2 *Critical State Concern:*

3  
4 Staff Comment: All adopted comprehensive plan Goals, Objectives and Policies (GOP)  
5 enacted, amended or rescinded within an Area of Critical State Concern must be  
6 consistent with the Principles for Guiding Development, Section 380.0552(7), Florida  
7 Statutes. The proposed GOP amendment promotes and furthers the following Principles  
8 in Section 380.0552(7):  
9

- 10 i. To strengthen local government capabilities for managing land use and  
11 ~~development so that local government is able to achieve these~~  
12 objectives without the continuation of the area of critical state concern  
13 designation.  
14

15 The proposed amendments to the LCP will provide clear direction that  
16 assists in the enforcement of the HCP and ITP land use and  
17 development requirements for endangered species habitat conservation  
18 in Big Pine Key and No Name Key.  
19

- 20 ii. To protect shoreline and marine resources including mangroves, coral  
21 reef formations, seagrass beds, wetlands, fish and wildlife, and their  
22 habitat.  
23

24 The proposed amendments will support the preservation of endangered  
25 species habitat in Big Pine Key and No Name Key.  
26

- 27 iii. To ensure the maximum well-being of the Florida Keys and its citizens  
28 through sound economic development.  
29

30 The proposed amendments will direct growth and development in a  
31 manner that that will minimize impacts on Federally protected  
32 endangered species.  
33

- 34 iv. To limit the adverse impacts of development on the quality of water  
35 throughout the Florida Keys.  
36

37 It is not anticipated that development resulting from the proposed  
38 amendments will impact the water quality.  
39

- 40 v. To protect the value, efficiency, cost-effectiveness, and amortized life  
41 of existing and proposed major public investments, including sewage  
42 collection and disposal facilities.  
43

44 It is not anticipated that development resulting from the proposed  
45 amendments will impact public infrastructure.  
46

- vi. To protect the public health, safety, and welfare of the citizens of the

1 Florida Keys and maintain the Florida Keys as a unique Florida  
2 Resource.

3  
4 The proposed amendments will support the preservation of endangered  
5 species habitat in Big Pine Key and No Name Key, which supports the  
6 maintenance of the unique environment only found Florida Keys.  
7

8  
9 D. *Impact on Community Character:*

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11 ~~The proposed amendment will allow the continued preservation of endangered species~~  
12 ~~habitat in Big Pine Key and No Name Key.~~  
13

14  
15 V FINDINGS OF FACT

16  
17 1. The Livable CommuniKeys Master Plan for Big Pine Key and No Name Key (LCP) was  
18 completed in August, 2004, adopted by the Board of County Commissioners on August 18, 2004  
19 and is incorporated by reference into the Monroe County 2010 Comprehensive Plan by Policy  
20 101.20.2(1)  
21

22 2. This LCP included Figures and Action Items that guide future development in big Pine Key  
23 and No Name Key.  
24

25 3. The Habitat Conservation Plan (HCP), Incidental Take Permit (ITP), and Monroe County  
26 Land Development Regulations (LDR) also include policies that impact future development in  
27 Big Pine Key and No Name Key.  
28

29 4. Conflicts between the HCP, ITP, LDR, and LCP for Big Pine Key have been identified.  
30

31 5. On January 7, 2009, the Monroe County Planning Commission held a public hearing on the  
32 proposed ordinance, and in due consideration of public comment and debate, recommended  
33 passing a resolution to the Board of County Commissioners approving the adoption of  
34 amendments to the Livable CommuniKeys Master Plan for Big Pine Key and No Name Key.  
35

36 6. The proposed amendments are internally consistent with other elements of the Comprehensive  
37 Plan.  
38

39 VI CONCLUSIONS OF LAW

40  
41 1. The proposed amendment will support and enhance the existing or future land use  
42 character of Monroe County.  
43

44 2. The proposed amendment is internally consistent with the Monroe County  
45 Comprehensive Plan.  
46

- 1 3. The proposed amendment will allow comprehensive protection and enhancement of the  
2 Florida Keys' unique habitat that supports Federally protected endangered species in Big  
3 Pine Key and No Name Key.  
4

5 VII RECOMMENDATION  
6

7 Staff recommends **approval** to the Acting Senior Director of Planning and Environmental  
8 Resources.  
9

10 VIII ATTACHMENTS  
11

- 12 1. Master Plan for Future Development of Big Pine Key and No Name Key  
13 2. Incidental Take Permit  
14 3. Habitat Conservation Plan for Florida Key Deer  
15 4. Memo Recommending Text Changes  
16 5. Draft Ordinance  
17  
18  
19